
IN THE MATTER OF	:	BEFORE THE SCHOOL
GABRIEL DE TOLLA,	:	ETHICS COMMISSION
CLEARVIEW REGIONAL	:	
BOARD OF EDUCATION,	:	Docket No. C08-07
GLOUCESTER COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Raymond Miller on February 15, 2007 against Dr. Gabriel DeTolla, a member of the Clearview Regional Board of Education (“Board”). An Answer was filed by the respondent on May 11, 2007. The Commission invited the parties to attend its meeting on February 26, 2008 to present witnesses and testimony to aid in the Commission’s investigation of this matter. Pursuant to N.J.A.C. 6A:28-6.7(d)4, the complainant filed additional papers on February 14, 2008, which included an affidavit and event log provided by the former Superintendent. A copy of the same was forwarded to the respondent on that date. Although the respondent also filed additional papers, the submission was outside the 10-day requirement provided in regulation, N.J.A.C. 6A:28-6.7(d)4, and, therefore, was not considered by the Commission. Both the complainant and the respondent appeared and presented testimony. Pursuant to N.J.A.C. 6A:28-6.7(d)5, the complainant filed post-hearing documents for the Commission’s review on March 5, 2008. The respondent did not submit additional papers.

The Commission tabled the discussion of this matter and its determination on probable cause until its meeting on April 1, 2008, at which time the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b), (c), (f) and (g) and N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) of the Code of Ethics for School Board Members. In its decision issued thereafter, the Commission stated:

The Commission finds ... that there is sufficient evidence to support the claim that the respondent violated the Act as he “participated in, played a primary role in, and exerted unauthorized pressure on the Clearview administration and the Superintendent with regard to his spouse’s application for a position within the District.” The Commission further finds sufficient evidence to support the claim that the respondent influenced and exerted pressure on new Board members by requesting their support in the hiring of his spouse and having them contact the Superintendent expressing support in the hiring of his spouse. Thus, the Commission finds that this matter should proceed to an adjudication on the merits of those claims and, specifically, whether the respondent violated N.J.S.A. 18A:12-24(b), (c), (f) and (g) and N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) of the Code of Ethics for School Board Members. (Commission’s decision, April 3, 2008)

The Commission dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24(e) and N.J.S.A. 18A:12-24.1(a) and notified the respondent that the matter was being transmitted to the Office of Administrative Law (OAL) for a hearing, pursuant to N.J.A.C. 6A:28-6.8(a), because material facts were in dispute.

By notice dated May 30, 2008, the respondent was advised that a hearing date of July 17, 2008 was set. The record indicates that the respondent filed a “motion” at the OAL to dismiss this matter by letter dated June 2, 2008, based on the fact that he is no longer serving on the Board. By letter dated July 1, 2008, the Deputy Attorney General (DAG) representing the School Ethics Commission submitted an objection to this motion, noting that the respondent’s current status does not moot the allegations in the complaint and further noting that, if the respondent is found in violation of the Act, the Commission could nevertheless recommend a penalty of reprimand or censure. The DAG therein noted, “it is my understanding that this matter will be addressed at the pre-hearing conference on July 17, 2008, and that no further response is required prior thereto.” (Commission Response at p. 2) The respondent was copied on the Commission’s letter in opposition to the motion.

By notice dated July 29, 2008, the Commission was informed that the respondent did not appear for the hearing; the file was returned from the OAL to the Commission for disposition and the respondent was accorded 13 days from July 29, 2008 to submit reasons for his failure to appear. The respondent did not file a written explanation with the Commission.

At its meeting on August 26, 2008, the Commission determined that, because the respondent failed to appear for the hearing at OAL to challenge its probable cause determination, *the allegations which the Commission found probable cause to credit are deemed admitted*. The Commission further determined that, pursuant to N.J.A.C. 6A:28-6.8(b), the complaint should be resolved by summary decision. Therefore, the respondent was accorded 30 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act.

On September 4, 2008, the respondent filed a written statement in response to the probable cause determination. The respondent initially asserts that the complainant in this matter was using the Commission for a personal vendetta and that it was he (the complainant) who conducted himself in an unethical manner. As to the proofs herein, the respondent contends that:

There has never been any evidence produced by the complainant that any perceived pressure was put on the Clearview administration. The only person to testify was Ms. Carroll (an irate superintendent whose dictatorial style was challenged by me as a board member and who also received a poor evaluation by me). And he has no corroborating witness for Ms. Carroll the superintendent. Mr. Miller’s testimony is all hearsay as noted by the commission, therefore there is no one to agree with Ms. Carroll’s account, but five people (including myself) that discount her exaggerated version of events. (Respondent’s Statement at page 2) (emphasis in text)

As to the allegation that he exerted pressure on new board members to support the hiring of his spouse, the respondent asserts that he produced evidence to the contrary by submitting interrogatories from four board members stating otherwise. The respondent maintains that:

No gain (financial or employment) to any member of my family ever resulted from these alleged conversations. My spouse's application was never completed and was even withdrawn. No discussion or vote ever took place of trying to place my spouse in employment at any public board meeting, unlike the actions of the complainant.*** (Id. at page 3).

The Commission notes that to the extent the respondent, in his September 4th submission, continues to challenge the evidence in this matter, the Commission cannot consider these arguments, but, instead, considers the respondent's claims as to why he should not be found in violation of the Act. N.J.A.C. 6A:28-6.8(b).

EVIDENCE BEFORE THE COMMISSION

The following documentation was brought before the Commission: the complaint and attachments, an affidavit with attached log of events submitted by Ms. Patricia Carroll, the former Superintendent, the respondent's Answer and attachments, as well as affidavits submitted by Board members Michael Riggs, Joseph Betlejewski, Frank Smith and Carmen Trifiletti on the respondent's behalf. As noted above, due to the respondent's failure to appear at the OAL to defend his position and pursuant to the ALJ's return of this matter to the Commission for disposition, the allegations which the Commission found probable cause to credit are deemed admitted. Thus, it is deemed admitted that the respondent "participated in, played a primary role in, and exerted unauthorized pressure on the Clearview administration and the Superintendent with regard to his spouse's application for a position within the District." It is also deemed admitted that the respondent influenced and exerted pressure on new Board members by requesting their support in the hiring of his spouse and having them contact the Superintendent expressing support in the hiring of his spouse. (Complaint at paragraphs 1 and 2)¹

ANALYSIS

At its April 1, 2008 meeting, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b), (c), (f) and (g) and N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) of the Code of Ethics for School Board Members.

Initially, the Commission considers whether the respondent violated N.J.S.A. 18A:12-24(b), which provides:

¹ The complaint filed on February 15, 2007 did not cite to specific sections of the Act that were alleged to have been violated. By letter dated March 8, 2007, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24(b), (c), (e), (f) and (g) and N.J.S.A. 18A:12-24.1(a), (c), (d), (e) and (f) of the Code of Ethics for School Board Members and also asserts that the respondent violated district policy.

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

Pursuant to N.J.S.A. 18A:12-23, a spouse is an immediate family member. The Commission notes in this connection that Ms. Carroll's affidavit states that she informed the respondent that it would be fiscally irresponsible to offer the respondent's wife a salary beyond the fourth step of the hiring guide and, therefore, she would not consider it. Notwithstanding Ms. Carroll's position on the issue in April 2006, the respondent pursued the matter in May 2006 when he spoke angrily to her on the phone and persisted in June when he met with her. (Carroll's Affidavit and Log) Based on the deemed admissions and evidence before the Commission, the Commission finds that the respondent attempted to use his position as a Board member to obtain an "unwarranted" privilege or advantage for his wife; namely, an unjustifiably high entrance salary. Notably, the statute does not require that he was successful in this endeavor, only that he made the attempt. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24(b).

The Commission next considers whether the respondent violated N.J.S.A. 18A:12-24(c), as set forth below:

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

The record herein does not show that the respondent was acting in his official capacity when he contacted the Superintendent and exerted pressure on her to consider the employment of his wife at a higher salary. Rather, the actions taken by the respondent appeared to be wholly outside his authorized duties as a board member, as discussed more fully below. Therefore, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

The Commission turns to N.J.S.A. 18A:12-24(f), which states:

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Again, it is deemed admitted that the respondent exerted unauthorized pressure on the Clearview administration and the Superintendent with regard to his spouse's application for a position within the District and that he influenced and exerted pressure on new Board members by requesting their support in the hiring of his spouse by having them contact the Superintendent expressing their support in that connection. As such, the Commission finds that the respondent used his public office for the purpose of securing financial gain for a member of his immediate family, in violation of N.J.S.A. 18A:12-24(f).

The Commission next considers whether the respondent violated N.J.S.A. 18A:12-24(g), which provides:

g. No school official ... shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district.

Although the respondent had conversations with the Superintendent about his wife's apparent interest in working in the District, the Commission cannot find on this record that the respondent's actions rose to the level of "representing" his wife in an application or matter pending before the Board, particularly since the respondent's wife's application was withdrawn before the Board ever formally considered her as a candidate for any position. Therefore, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24(g).

Moving to the Code of Ethics for School Board Members, the Commission notes that the relevant sections of the code state:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

As set forth above, the actions taken by the respondent were wholly outside his authorized duties as a board member. Although the respondent indicated in his Answer that he

was, at the time, head of the personnel committee, there is nothing on this record to indicate that the committee had authorized his inquiries to the Superintendent. As such, while the Commission cannot find his conduct violated N.J.S.A. 18A:12-24.1(c) which concerns “board action,” such conduct does implicate N.J.S.A. 18A:12-24.1(e). Private action is defined as action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities as a member of a district board of education. N.J.A.C. 6A:28-7.1. Mindful of the respondent’s deemed admissions, the Commission finds that the respondent’s actions were beyond the scope of his duties as a Board member. As to whether private action of this kind “may compromise the board,” the Commission finds that it may. Ms. Carroll’s affidavit indicates that she insisted that the district needed to be fiscally responsible and that offering the respondent’s wife the salary that he pursued was not possible. It was also the Superintendent’s perception that doing so would have repercussions among her staff. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e).

Next, the Commission considers whether the respondent administered the schools in violation of N.J.S.A. 18A:12-24.1(d). A Board member may be found to have administered the schools when he “has become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district or charter school or has given a direct order to school personnel.” N.J.A.C. 6A:28-7.1. Here, it is important to note that a board may appoint a certificated or non-certificated employee only upon the recommendation of the chief school administrator. N.J.S.A. 18A:27-4.1. As such, the hiring of school employees is the responsibility of the chief school administrator and his/her designees. Mindful of the respondent’s deemed admissions, the Commission finds that the respondent herein became directly involved in the District’s hiring process when he repeatedly discussed the matter of his wife’s candidacy for a position with Ms. Carroll, when he exerted pressure on her to consider hiring his wife at a higher salary than was the practice of the District and when he influenced other Board members to contact the Superintendent to this end. The Commission, therefore, finds that that the respondent violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members.

Finally, although the Commission finds that this record does not support the conclusion that the respondent surrendered his independent judgment to special interest or partisan political groups,² because it is deemed admitted that the respondent exerted unauthorized pressure on the Clearview administration and the Superintendent with regard to his spouse’s application for a position within the District and that he influenced and exerted pressure on new Board members by requesting their support in the hiring of his spouse, the Commission finds that the respondent used the schools for personal gain³ in violation of N.J.S.A. 18A:12-24.1(f).

² “Partisan political groups” means a number of persons who are organized and voluntarily united in opinion and who adhere to a particular political party or cause as opposed to the public interest at large. “Special interest groups” means a group of persons who are organized and have a specific interest in common. N.J.A.C. 6A:28-7.1.

³ “Personal gain” means a personal involvement that is or creates some benefit to a member of the district board of education or a member of a charter school board of trustees or an immediate family member.

DECISION

For the reasons set forth above, the Commission finds that Dr. Gabriel DeTolla violated N.J.S.A. 18A:12-24(b) and (f) and N.J.S.A. 18A:12-24.1(d), (e) and (f) of the Code of Ethics for School Board Members. The Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24(c), and (g) and N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members.

PENALTY

The Commission recommends that the Commissioner of Education impose a penalty of censure, noting that board members have been censured for single findings of violations of N.J.S.A. 18A:12-24(b) (*See, I/M/O Raymond Bonker, Lenape Valley Reg'l Bd. of Ed.*, C11-97 (March 30, 1998), approved by Commissioner, May 22, 2008, where a board member was censured for violating N.J.S.A. 18A:12-24(b) when he released staff email addresses in his campaign literature before the board had discussed and approved releasing them in public; *I/M/O Lawrence James, Chesilhurst Bd. of Ed.* C10-98 (December 15, 1998), approved by Commissioner February 2, 1999, where a board member was censured for violating N.J.S.A. 18A:12-24(b) when he asked the Business Administrator to intercede on his behalf in order to acquire an unsecured loan from the bank that held the Board's accounts). Board members have also been censured for single findings of N.J.S.A. 18A:12-24.1(d) (*See, I/M/O Doris Graves, Pleasantville Bd. of Education*, C47-05 (May 27, 2008); approved by Commissioner, July 10, 2008, wherein a board member was found to have violated 18A:12-24.1(d) when she spoke with the district's facilities coordinator and later appeared at a Board Personnel meeting regarding a personnel action affecting her cousin by marriage). In the instant matter, because the respondent is no longer serving on the Board, the Commission cannot recommend a more severe penalty.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the

Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Paul C. Garbarini
Chairperson

Mailing Date: _____

Resolution Adopting Decision – C08-07

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and documents brought to the record pursuant to its investigation; and

Whereas, at its meeting of April 1, 2008, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b), (c), (f) and (g) and N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) of the Code of Ethics for School Board Members; and

Whereas, the matter was transmitted to the OAL for hearing in accordance with N.J.A.C. 6A:28-6.8(a), but Dr. DeTolla failed to appear for the hearing and the matter was returned to the Commission for disposition; and

Whereas, at its meeting on August 26, 2008, the Commission determined that, because the respondent failed to appear for the hearing at OAL to challenge its probable cause determination, the allegations which the Commission found probable cause to credit are deemed admitted and it would resolve the matter by summary decision; and

Whereas, the respondent was accorded 30 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act; and

Whereas, the respondent submitted a written statement which was considered by the Commission; and

Whereas, at its meeting on October 27, 2008, the Commission determined that Dr. Gabriel DeTolla violated N.J.S.A. 18A:12-24(b) and (f) and N.J.S.A. 18A:12-24.1(d), (e) and (f) of the Code of Ethics for School Board Members. The Commission dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24(c), and (g) and N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members.

Whereas, at its meeting on October 27, 2008, the Commission recommended a penalty of censure;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2008.

Joanne Boyle, Executive Director

